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SENATE

{ REPORT
107-284

WALLOWA LAKE DAM REHABILITATION AND WATER MANAGEMENT ACT OF 2001

SEPTEMBER 17, 2002.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany S. 1883]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1883) to authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 1883 is to authorize the Secretary of the Interior acting through the Commissioner of Reclamation to participate in, and provide funding for: (1) the Wallowa Lake Dam Rehabilitation Program; and (2) the Wallowa Valley Water Management Plan.

BACKGROUND AND NEED

Wallowa Lake Dam is a privately-owned dam constructed in 1918 and raised in 1929. It is owned and operated by the Associated Ditch Companies, Inc. (ADC). In 1996, the Oregon Water Resources Department identified significant dam safety deficiencies with Wallowa Lake Dam. Subsequently, ADC in conjunction with the Grande Ronde Model Watershed Council, Reclamation, and other local, State, and Federal agencies, developed the Wallowa Lake Dam Rehabilitation and Water Management Program to address dam safety deficiencies and to tie correction of those deficiencies to the solution of larger environmental issues in the Wallowa River and Lostine River systems. Successful implementation of the program will address State, local, tribal, and Federal ob-

jectives by promoting dam safety and flood control; restoration of depleted fish populations; and the protection of irrigation and municipal water supplies.

LEGISLATIVE HISTORY

S. 1883 was introduced by Senators Smith and Wyden on December 20, 2001. The Subcommittee on Water and Power held a hearing on June 6, 2002. At the business meeting on July 31, 2002, the Committee on Energy and Natural Resources ordered S. 1883, favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on July 31, 2002, by a voice vote of a quorum present, recommends that the Senate pass S. 1883, as described herein.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the “Wallowa Lake Dam Rehabilitation and Water Management Act of 2001”.

Section 2 defines terms used in the Act.

Section 3, subsection (a) authorizes the Secretary of the Interior to participate in the Wallowa Lake Dam Rehabilitation Program; and to participate in the planning, design, and construction of facilities needed to implement the Wallowa Valley Water Management Plan in cooperation with the tribal, State, and local governmental entities.

Subsection (b), paragraph (1) limits the Federal contribution under this Act to an amount not to exceed 80 percent of the cost of the authorized activities.

Subsection (b), paragraph (2) excludes expenditures made by the Bonneville Power Administration in the Wallowa River watershed and individual farmers in any Federal farm or conservation program, from being credited against the Federal share.

Subsection (c) requires the Secretary to comply with otherwise applicable State water law in carrying out this Act.

Subsection (d) prohibits the Federal Government from holding title to any facility rehabilitated or constructed under this Act.

Subsection (e) states that the Federal Government shall not be responsible for the operation or maintenance of any facilities constructed or rehabilitated under this Act.

Subsection (f) provides that any facility located at Wallowa Lake Dam for trapping and transportation of migratory adult salmon may only be owned and operated by the Nez Perce Tribe.

Section 4 states that activities funded under this Act shall not be considered a supplemental or additional benefit under the Act of June 17, 1902 (82 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

Section 5 authorizes \$32,000,000 to be appropriated to the Secretary for the Federal share of the costs of activities authorized under this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 10, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1883, the Wallowa Lake Dam Rehabilitation and Water Management Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julie Middleton.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 1883—Wallowa Lake Dam Rehabilitation and Water Management Act of 2001

Summary: S. 1883 would authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon and the implementation of the Wallowa Valley Water Management Plan. The bill would limit the federal share of the rehabilitation costs to 80 percent, excluding any funding by the Bonneville Power Administration (BPA). In addition, we estimate that implementing S. 1883 would result in spending by BPA of about \$5 million over the 2003–2007 period for fish mitigation activities. The federal government would not hold title to any facility rehabilitated or constructed under this act, nor would the federal government be responsible for the operation and maintenance of those facilities.

Assuming appropriation of the authorized amount, CBO estimates that implementing S. 1883 would cost about \$27 million over the 2003–2007 period and \$32 million over the 2003–2012 period. Because BPA's spending authority is not subject to appropriation, implementing S. 1883 also would result in direct spending of about \$5 million over the 2003–2007 period; therefore, pay-as-you-go procedures would apply.

S. 1883 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1883 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year in millions of dollars—				
	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Spending by the Bureau of Reclamation:					
Estimated Authorization Level	6	7	7	6	6
Estimated Outlays	2	5	7	7	6
CHANGES IN DIRECT SPENDING					
Net Spending by BPA:					
Estimated Budget Authority	5	0	0	0	0
Estimated Outlays	2	2	1	(¹)	(¹)

¹ Collections of less than \$500,000.

Basis of estimate

Spending subject to appropriation

For this estimate, CBO assumes that S. 1883 will be enacted near the start of fiscal year 2003 and that the authorized amount will be appropriated in roughly equal increments over the next five years.

Based on information from the Bureau of Reclamation, CBO estimates the total cost of rehabilitating the Wallowa Lake Dam in Oregon and implementing the Wallowa Valley Water Management Plan would be about \$39 million. S. 1883 would authorize the appropriation of \$32 million for the Bureau's share of the cost of those projects. The remaining \$7 million would be paid by the BPA and the Bonneville Power Foundation, a nonprofit organization, to complete the projects.

Based on information from the Bureau, we expect that rehabilitation of the dam and implementation of the management plan would take five years and that funds will be appropriated in roughly equal installments over that period to complete the projects. Thus, assuming appropriation of the authorized amount, we expect that implementing the bill would cost about \$27 million over the 2003–2007 period and \$32 million over the 2003–2012 period.

Direct spending

Implementing S. 1883 also would result in additional direct spending by BPA of about \$5 million over the 2003–2007 period for fish mitigation activities related to the Wallowa Lake Dam projects authorized in the bill. Such spending is authorized under current law, but BPA would not make these investments without the Bureau's involvement in the Wallowa Lake projects. Because BPA must recover its costs through the sale of electricity, any additional spending would be offset by slightly higher proceeds from electricity sales over the next 15 to 20 years. Consequently, BPA's additional spending would have a negligible net budgetary impact over that period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. The changes in outlays after 2005 would be savings of less than \$500,000 a year for 10 to 15 years. For the purpose of enforcing pay-as-you-go procedures, only the effects through fiscal year 2006 are counted.

	By fiscal year in millions of dollars—											
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
Changes in Outlays	0	2	2	1	0	0	0	0	0	0	0	
Changes in Receipts	Not applicable											

Intergovernmental and private-sector impact: S. 1883 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Julie Middleton and Lisa Cash Driskill; Impact on State, Local, and Tribal Governments: Marjorie Miller; and Impact on the Private Sector: Lauren Marks.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1883. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1883.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendation relating to S. 1883 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, August 8, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter responds to your request for the views of the Department of the Interior on S. 1883, a bill that would authorize Reclamation to participate in the Wallows Lake Dam Rehabilitation and Water Management Program in Oregon. This confirms testimony of Mark A. Limbaugh, Director, External & Intergovernmental Affairs, Bureau of Reclamation, U.S. Department of the Interior on S. 1883 before the Committee on June 6, 2002.

While we believe there are merits to the proposed program, the Department does not support S. 1883.

Wallowa Lake Dam is a privately-owned dam constructed in 1918 and raised in 1929, and is owned and operated by the Associated Ditch Companies, Inc. (ADC). Dam safety deficiencies have been identified by the US Army Corps of Engineers and Oregon Water Resources Department. ADC, in conjunction with the Grande Ronde Model Watershed Council, Reclamation, and other local, state, and Federal agencies, developed the Wallowa Lake Dam Rehabilitation and Water Management Program to address dam safety deficiencies and to tie correction of those deficiencies to larger environmental issues in the Wallowa River Basin.

The Wallowa Lake Dam Rehabilitation and Water Management Program is proposed to begin in FY 2002 and continue through FY 2007, at an estimated total cost of \$38,800,000. S. 1883 sets out an 80/20 cost share for this Program, under which the federal government would pay \$32 million funded through the Bureau of Reclamation (BOR).

Reclamation itself has an inventory of aging dams—and the responsibility to ensure the safety and reliability of Reclamation dams to protect the downstream public. Dam safety is one of Rec-

lamation's highest priorities. I would like to give you a sense of the scope of our dam safety responsibilities: the Bureau has reservoirs impounded by 457 dams and dikes. Of these structures, 362 dams and dikes, located at 252 different project facilities, would likely cause loss of life if they were to fail. Approximately 50 percent of Reclamation's dams were built between 1900 and 1950, and about 90 percent of the dams were built before currently-used state of the art design and construction practices. Aging Reclamation-owned dams, which lack state-of-the-art structural reliability features, require Reclamation to conduct extensive ongoing risk management activities to assure safe dam performance and protect the public from unreasonable risk.

While we fully understand the importance of ensuring the safety of Wallowa Lake Dam, this dam is not a federal project. It is privately owned and operated, and falls under a dam safety program of the Oregon Department of Water Resources. Reclamation believes the Wallowa Lake Dam Rehabilitation and Water Management Program is worthwhile, with potentially numerous benefits; however we are concerned about the proposed federal role in this project. Despite the very high federal cost share for the project, under S. 1883 there is currently no federal interest in the dam, and none is provided by the bill; moreover, there is no provision for repayment by project beneficiaries in accordance with reclamation law.

We are also concerned that Reclamation's participation in this program would adversely impact ongoing projects and operations. S. 1883 would authorize the use of Reclamation funds for a non-Federal purpose. Reclamation funds must be targeted to perform essential functions at our federal projects, such as security at BOR dams and reservoirs, operations and maintenance (O&M), resource management, dam safety, or construction. The Department cannot, therefore, support S. 1883.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN W. KEYS III,
Commissioner, Bureau of Reclamation.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1883, as ordered report.